

Before the
Federal Communications Commission
Washington, DC 20554

In the Matter of)	
)	
Reexamination of Roaming Obligations of)	WT Docket No. 05-265
Commercial Mobile Radio Service Providers)	
)	
Automatic and Manual Roaming Obligations)	WT Docket No. 00-193
Pertaining to Commercial Mobile Radio)	
Services)	

**REPLY COMMENTS OF
THE WIRELESS COMMUNICATIONS ASSOCIATION INTERNATIONAL, INC.**

The Wireless Communications Association International, Inc. (“WCA”), by its attorneys, hereby replies to the comments submitted by the NY3G Partnership (“NY3G”)¹ in response to the *Notice of Proposed Rulemaking* in the above captioned proceeding.²

In its comments in this docket, NY3G asks the Commission to expand its existing roaming rules to encompass Broadband Radio Service (“BRS”) and Educational Broadband Service (“EBS”) providers that offer Commercial Mobile Radio Services (“CMRS”).³ In so doing, NY3G merely rehashes arguments that the Commission rejected just four months earlier, when it denied NY3G’s petition to impose similar requirements as a condition to Commission approval of the merger of Sprint Corporation (“Sprint”) and Nextel Communications, Inc.

¹ Comments of NY3G Partnership, WT Docket No. 05-265 (filed Nov. 28, 2005) [“NY3G Comments”].

² See *Reexamination of Roaming Obligations of Commercial Mobile Radio Service Providers*, Memorandum Opinion and Order and Notice of Proposed Rulemaking, FCC 05-160 (rel. Aug. 31, 2005) [“NPRM”].

³ See NY3G Comments at 1.

(“Nextel”).⁴ Nothing in NY3G’s comments in this proceeding warrants reexamination (much less reversal) of that decision.

NY3G makes no bones of the fact that it is proposing specific rule changes that essentially parrot the roaming-related conditions it attempted to impose less than ten months ago on the Sprint-Nextel merger. Indeed, rather than obscure the repetitious nature of its filing, NY3G has submitted a copy of its petition to deny the Sprint-Nextel merger as an exhibit to its comments and incorporated the arguments therein by reference.⁵ Surprisingly, however, NY3G’s comments do not even mention, much less take issue with, the Commission’s contrary finding in the August 8, 2005 *Memorandum Opinion and Order* approving the Sprint-Nextel merger, where the Commission concluded that imposition of roaming obligations on BRS and EBS licensees would be “premature, given the nascency of broadband uses and the on-going transition process in the 2.5 GHz band.”⁶ Suffice it to say that NY3G’s instant comments offer no new facts or arguments that would justify any further Commission review of the subject.⁷ That is hardly surprising, given that broadband use of the 2.5 GHz remains in its nascency and that the transition to the new 2.5 GHz bandplan is just beginning.

⁴ See *Applications of Nextel Communications, Inc. and Sprint Corporation*, Memorandum Opinion and Order, FCC 05-148 at ¶ 162 (rel. Aug. 8, 2005) (citation omitted) [*“Sprint-Nextel Merger Order”*].

⁵ NY3G Comments at 3 n.5.

⁶ *Sprint-Nextel Merger Order* at ¶ 162.

⁷ NY3G’s petition for reconsideration of the *Sprint-Nextel Merger Order* remains pending. See Petition for Reconsideration of NY3G Partnership, WT Docket No. 05-63 (filed Sept. 7, 2005); Erratum to Petition for Reconsideration of NY3G Partnership, WT Docket No. 05-63 (filed Sept. 9, 2005). However, in seeking reconsideration NY3G has not presented any basis for the Commission to reverse its decision. See Opposition to Petition for Reconsideration of Sprint Nextel Corporation, WT Docket No. 05-63, at 2 (filed Sept. 19, 2005) (“NY3G mischaracterizes the Commission’s reasoning in the *Merger Order* and presents no new relevant facts or arguments to support its request for onerous merger conditions.”).

Moreover, NY3G's instant comments ignore the fact that the Commission's position on the inapplicability of roaming requirements to BRS and EBS licensees was a matter of record even before the Commission rejected NY3G's efforts to condition the Sprint-Nextel merger. In its *Notice of Proposed Rulemaking* in WT Docket No. 03-66, the Commission specifically sought comment on whether it should adopt roaming standards in the 2.5 GHz band.⁸ As the *Sprint-Nextel Merger Order* makes clear, the Commission subsequently determined in its July 29, 2004 *Report and Order* in WT Docket No. 03-66 that the imposition of roaming obligations on BRS/EBS providers is "not in the public interest."⁹

Thus, twice within the past 20 months the Commission has refused to apply roaming requirements on BRS and EBS licensees. The Commission's policy in recent years has been to minimize regulation of nascent services, allowing the marketplace to develop free from regulatory intervention and only stepping in upon evidence of marketplace failure.¹⁰ Just as it was five months ago when the Commission released the *Sprint-Nextel Merger Order*, it is simply too soon in the brief history of BRS and EBS as a mobile broadband delivery platform to

⁸ See *Amendment of Parts 1, 21, 73, 74 and 101 of the Commission's Rules to Facilitate the Provision of Fixed and Mobile Broadband Access, Educational and Other Advanced Services in the 2150-2162 and 2500-2690 MHz Bands Part 1 of the Commission's Rules*, Notice of Proposed Rule Making and Memorandum Opinion and Order, 18 FCC Rcd 6722, 6782 (2003).

⁹ See *Sprint-Nextel Merger Order* at ¶ 162 n.380 citing *Amendment of Parts 1, 21, 73, 74 and 101 of the Commission's Rules to Facilitate the Provision of Fixed and Mobile Broadband Access, Educational and Other Advanced Services in the 2150-2162 and 2500-2690 MHz Bands*, Report and Order and Further Notice of Proposed Rulemaking, 19 FCC Rcd 14165, 14216, 14233-34 (2004). That decision was hardly surprising, given that the record before the Commission in WT Docket No. 03-66 reflected that market forces, and not mandatory standards, should govern the roaming obligations of BRS/EBS providers the 2.5 GHz band. See Comments of Wireless Communications Ass'n Int'l, *et al.*, WT Docket No. 03-66, at 61-63 (filed Sept. 8, 2003) ["WCA BRS/EBS Comments"].

¹⁰ See *Sprint-Nextel Merger Order* at ¶ 162 n.378. See also WCA BRS/EBS Comments at 61-63.

consider the imposition of roaming requirements on those BRS and EBS licensees that provide CMRS. Rather, the Commission should allow the marketplace to establish standards for BRS and EBS roaming if and when the 2.5 GHz band evolves in such a manner that roaming is possible and desired by consumers.

WHEREFORE, for the foregoing reasons, WCA urges the Commission to reject NY3G's proposal and adhere to its prior decisions not to apply roaming requirements to BRS/EBS providers in the 2.5 GHz band.

Respectfully submitted,

**THE WIRELESS COMMUNICATIONS
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